

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

Dorothy Mares, Individually and as
Parent and Next Friend of
Brianna Montero, a minor and Ceara Montero,

Plaintiffs,

v

Cause No.

Taune Shortt and American Automobile Association,

Defendants.

NOTICE OF REMOVAL

COME NOW Defendants, Taune Shortt and American Automobile Association, (collectively “Defendants”) by and through their attorneys of record, Keleher & McLeod, P.A. (S. Charles Archuleta), and hereby submit the following Notice of Removal. In support of this Notice, Defendants state:

1. Plaintiffs’ Complaint for Personal Injury was filed on July 13, 2011, in the Second Judicial District Court, County of Bernalillo, State of New Mexico, Cause No. CV 2011-07037, (“State Court Action”). (A true and correct copy of the Complaint is attached as **Exhibit A.**)
2. The Complaint included as defendants Taune Shortt and American Automobile Association.
3. Defendant Shortt received a copy of the Complaint and Summons on July 24, 2011 (A copy of the Summons is attached as **Exhibit B.**) Upon information and belief, Plaintiff has not served the Complaint on American Automobile Association.

4. Accordingly, this case is timely removed within thirty (30) days of service of the above-referenced Defendants.

5. Plaintiff also filed a Certification Regarding Arbitration (“Certification”) pursuant to LR2-603 indicating the matter is not to be sent to arbitration and thus that the amount Plaintiff is seeking exceeds \$25,000. (Defendant’s counsel is not in possession of a copy of the Certification.) The Complaint and Certification are the only documents that have been filed in the State Court Action.

6. Upon information and belief, each Plaintiff is a citizen of Torrence County, New Mexico.

7. Defendant Taune Shortt is a resident of the State of California.

8. Defendant American Automobile Association is a Connecticut corporation with its principal place of business in Heathrow, Florida pursuant to the New Mexico Public Regulatory Commission.

9. Upon information and belief, the amount Plaintiff will seek as damages exceeds \$75,000, exclusive of interest and costs.¹ In determining the amount in controversy, the Court should look to the “allegations of the complaint, or, where they are not dispositive, ... the allegations in the notice of removal.” *Laughlin v. K-Mart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995).

10. The Complaint does not allege any specific dollar amount of damages Plaintiff allegedly sustained. *See Rule 1-008(A)(3) NMRA (2008)*. When this is the case, the Defendants may establish the jurisdictional amount in their Notice of Removal. *Sisneros v. Wilson*, 2006 U.S. Dist. LEXIS 95400 (D.N.M. 2006). The court may also look to the substance and nature of

¹ Defendants deny Plaintiff is entitled to any damages.

the injuries and damages described in pleadings. *See Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 882-83 (5th Cir. 2000).

11. The Complaint alleges that each Plaintiff suffered serious injuries, pain and suffering and emotional distress incurred medical expenses and other related expenses and will incur medical and related expenses in the future as a direct and proximate result of acts or omissions of Defendants

12. The State Court Action is removable pursuant to 28 U.S.C. § 1441 because the parties are citizens of different states and the amount in controversy exceeds \$75,000 as required under 28 U.S.C. § 1332.

13. Written notice of the filing of this Notice of Removal is being served upon Plaintiff pursuant to 28 U.S.C. § 1446(d).

14. A true and correct copy of this Notice of Removal will be filed with the Clerk of the Second Judicial District Court of the County of Bernalillo, State of New Mexico, promptly after filing with this Court, pursuant to 28 U.S.C. § 1446(a).

15. A completed “civil cover sheet” is attached hereto as **Exhibit C**.

WHEREFORE, Defendants, request that the State Court Action be removed from the Second Judicial District Court of the County of Bernalillo, State of New Mexico, to this Court for trial and determination as provided by law.

Respectfully submitted,

KELEHER & McLEOD, P.A.

By /s/ S. Charles Archuleta
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Attorneys for Defendants

I HEREBY CERTIFY that on this 23rd day of August 2011, a true and correct copy of this NOTICE OF REMOVAL was filed electronically pursuant to CM/ECF procedures for the District of New Mexico, and, in addition to any electronic notice generated by the Court, was e-mailed and mailed to the following counsel of record:

Felicia G. Weingartner, Esq.
PO Box 7627
Albuquerque, NM 87194
Attorney for Plaintiff

By /s/ S. Charles Archuleta
S. Charles Archuleta

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